

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mercedes Bayon	Team: Squad #13	CCRB Case #: 201506616	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/08/2015 2:00 PM	Location of Incident: Beach 48th Street and Rockaway Freeway	Precinct: 101	18 Mo. SOL 2/8/2017	EO SOL 2/8/2017	
Date/Time CV Reported Mon, 08/10/2015 12:06 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/10/2015 12:06 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Jolan Lewis	07344	933929	101 PCT
3. POM Travis Mussaw	13089	945262	101 PCT
4. POM Andre Figueiredo	18440	936595	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Travis Mussaw	Abuse: PO Travis Mussaw stopped § 87(2)(b)	
B.POM Andre Figueiredo	Abuse: PO Andre Figueiredo stopped § 87(2)(b)	
C.POM Jolan Lewis	Abuse: PO Jolan Lewis stopped § 87(2)(b)	
D.POM Jolan Lewis	Force: PO Jolan Lewis used physical force against § 87(2)(b)	
E.POM Andre Figueiredo	Force: PO Andre Figueiredo pointed his gun at § 87(2)(b)	
F.POM Jolan Lewis	Abuse: PO Jolan Lewis searched § 87(2)(b)	
G.POM Jolan Lewis	Abuse: PO Jolan Lewis frisked § 87(2)(b)	
H.POM Andre Figueiredo	Abuse: PO Andre Figueiredo frisked § 87(2)(b)	
I.POM Andre Figueiredo	Abuse: PO Andre Figueiredo searched § 87(2)(b)	
J. An officer	Abuse: An officer searched § 87(2)(b)	

Case Summary

On August 10, 2015, § 87(2)(b) filed this complaint with the CCRB via the telephone.

On August 8, 2015, at approximately 2:00 p.m., § 87(2)(b) was riding his bicycle eastbound on Rockaway Freeway in Queens. According to § 87(2)(b) he was riding his bicycle in a bike lane on Rockaway Freeway. He described Rockaway Freeway as having one lane of traffic travelling eastbound and one lane of traffic travelling westbound. As § 87(2)(b) approached Beach 48th Street, he was stopped by three plainclothes officers: PO Jolan Lewis, PO Travis Mussaw, and PO Andrew Figueiredo, of the 101st Precinct, who were driving in an unmarked police vehicle parallel to § 87(2)(b) (**Allegations A-C**). While § 87(2)(b) did not initially know who these males were, he later learned that they were police officers. § 87(2)(b) identified the driver of the police vehicle by name as PO Lewis because PO Lewis later issued him a summons. However, the investigation identified the operator as PO Mussaw. § 87(2)(b) stated that the operator of the police vehicle, PO Mussaw, directed § 87(2)(b) to stop, and § 87(2)(b) replied “OK.” § 87(2)(b) attempted to stop his bicycle; however, the brakes were not working properly and he was unable to stop. PO Mussaw asked § 87(2)(b) if his brakes were working and § 87(2)(b) stated that they should have been working. According to § 87(2)(b) PO Mussaw cut him off with the vehicle and crashed into a wall. Upon this occurring, § 87(2)(b) got off of his bicycle and began to run westbound on Rockaway Freeway away from the officers. PO Lewis and PO Figueiredo exited the police vehicle and began pursuing § 87(2)(b) on foot while PO Mussaw remained in the vehicle. As the officers pursued § 87(2)(b) westbound, PO Mussaw drove the vehicle onto the westbound side of traffic and parked the vehicle.

As § 87(2)(b) was running, PO Lewis was the first officer to “close in” on him. § 87(2)(b) alleged that PO Lewis threw a punch at him, but missed because § 87(2)(b) ducked down out of the way (**Allegation D**). PO Lewis then allegedly drew his firearm and pointed it at § 87(2)(b) and directed him to get on the ground; however, the investigation determined it was PO Mussaw who drew his firearm and pointed it at § 87(2)(b) (**Allegation E**). § 87(2)(b) complied with PO Lewis’ order and got down on the ground on his knees. He was then pushed down to the ground, handcuffed, searched, and frisked by PO Figueiredo and PO Lewis (**Allegations F-I**). Following this, a marked police vehicle arrived on the scene and the driver, an unidentified Hispanic male officer in his 20s, exited the vehicle. The passenger remained seated in the vehicle. The Hispanic male officer allegedly approached § 87(2)(b) and felt the inside of § 87(2)(b)’s socks and shoes (**Allegation J**). § 87(2)(b) was then released with a summons for disorderly conduct for blocking vehicular traffic. Following § 87(2)(b)’s interaction with the officers, he went to § 87(2)(b) Hospital to have his shoulder checked out. It was determined that he had an abrasion on his shoulder as well as cuts in his wrist from the handcuffs and cuts on his knuckles.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- A Notice of Claim Inquiry was submitted to NYC Office of the Comptroller and will be added to the case file upon receipt.
- A search of BADS for any previous arrests for § 87(2)(b) within the last ten years returned negative results.

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 12).
- PO Lewis has been a member of service for 11 years, and has two prior CCRB cases involving four allegations, none of which were substantiated. § 87(2)(g) (Board Review 15).
- PO Mussaw has been a member of service for eight years and has two prior CCRB cases involving three allegations. In CCRB case number 201213975, a frisk allegation was substantiated against PO Mussaw. The CCRB recommended charges and the NYPD disposition is not listed in the CTS. § 87(2)(g) (Board Review 14).
- PO Figueiredo has been a member of service for 10 years and has 10 prior CCRB cases involving 27 allegations. In CCRB case number 200803055, a threat of force allegation was substantiated against him. The CCRB recommended instructions and the NYPD disposition was instructions. In two past cases he was alleged to have pointed his gun or make a threat of force; in two past cases he was alleged to have performed frisks; in three past cases he was alleged to have performed searches; and in five past cases he was alleged to have conducted stops (Board Review 13).

Findings and Recommendations

Explanation of Subject Officer Identification

- A stop allegation has been pleaded against PO Mussaw because he was the officer who initiated the stop from the vehicle and also cut § 87(2)(b) off to get him to stop riding his bicycle. A stop allegation has also been pleaded against PO Lewis and PO Figueiredo because they are the officers who pursued § 87(2)(b) on foot and physically stopped § 87(2)(b) from fleeing.
- A physical force allegation has been pleaded against PO Lewis because § 87(2)(b) identified him by name and based on PO Lewis' own admission and PO Figueiredo's testimony, PO Lewis was the first officer who approached and made physical contact with § 87(2)(b).
- § 87(2)(b) alleged that PO Lewis drew his firearm and pointed it at him. However, PO Lewis denied doing so and during PO Figueiredo's statement, he identified himself as the officer who drew and pointed his firearm at § 87(2)(b). Further, PO Figueiredo stated that he told PO Lewis to continue approaching § 87(2)(b) and he did not see PO Lewis with his firearm drawn and pointed. As such, a gun pointed allegation has been pleaded against PO Figueiredo.
- § 87(2)(b) stated that the two officers who pushed him down to the ground also searched him. The investigation determined that one of these officers was PO Lewis. Further by PO Lewis' own admission, in addition to searching § 87(2)(b) he frisked him. Thus a search allegation and a frisk allegation have been pleaded against PO Lewis.
- As stated above, § 87(2)(b) stated that the two officers who pushed him down to the ground also searched him. The investigation determined that one of these officers was PO Figueiredo. Further, by PO Figueiredo's own admission, he also frisked § 87(2)(b). As such, a search allegation and a frisk allegation have been pleaded against PO Figueiredo.
- § 87(2)(b) alleged that an unknown uniformed officer who arrived in a marked police vehicle searched his socks and sneakers. § 87(2)(b) provided a vague description of this

officer. Further PO Lewis, PO Mussaw, and PO Figueriedo stated that an additional unit only drove past them, did not exit their vehicle, and then left. They did not know who the officers in the vehicle were. Further, a search for an event report related to this incident returned negative results. Consequently, the subject of this search is unknown. Thus a search allegation has been pleaded against, “An officer” from the 101st Precinct.

Allegations not pleaded

- **Force:** A force allegation pertaining to § 87(2)(b) being pushed down to the ground has not been pleaded as it was minimal and incidental to stopping § 87(2)(b) from fleeing.

Allegation A –Abuse of Authority: PO Travis Mussaw stopped § 87(2)(b)

Allegation B – Abuse of Authority: PO Andre Figueiredo stopped § 87(2)(b)

Allegation C – Abuse of Authority: PO Jolan Lewis stopped § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped by PO Mussaw, PO Figueiredo, and PO Lewis. According to § 87(2)(b) he rode his bicycle on Rockaway Freeway towards Beach 48th Street where he was stopped by the above officers. § 87(2)(b) was riding in a bicycle lane when PO Mussaw drove up beside him, asked him to stop, and § 87(2)(b) replied “OK.” § 87(2)(b) explained that the brakes on his bicycle were not functioning properly and he was unable to come to a stop. PO Mussaw asked § 87(2)(b) if his brakes were working and § 87(2)(b) informed him that they were “supposed to be working.” § 87(2)(b) attempted to stop the bicycle with his feet, but was not successful. At this time, PO Mussaw drove the vehicle up ahead and turned the vehicle in front of § 87(2)(b) blocking him from riding further. At this moment, § 87(2)(b) got off of his bicycle and began running in the opposite direction. § 87(2)(b) stated that he was only able to run about three feet before PO Figueiredo and PO Lewis were able to physically stop him from fleeing. According to § 87(2)(b) during this time, he did not know they were police officers. § 87(2)(b) was eventually issued a summons for obstructing vehicular traffic.

According to the testimony of PO Mussaw and PO Figueiredo, they observed § 87(2)(b) riding his bicycle in the middle of the road on Rockaway Freeway. Similarly, PO Lewis stated that he observed § 87(2)(b) riding his bicycle on Rockaway Freeway; however, he described that § 87(2)(b) was swerving in and out of traffic between lanes causing an inconvenience to other vehicles. All of the officers were in agreement that based on their initial observation, § 87(2)(b) could have been stopped and issued a summons for causing an inconvenience to other vehicles and obstructing traffic. Further all officers were in agreement that they observed § 87(2)(b) motioning towards his waistband area as he rode his bicycle. PO Lewis explained that he observed § 87(2)(b) “adjusting his waistband area,” and looking around. PO Mussaw described that when he drove the vehicle parallel to § 87(2)(b) he observed a bulge in § 87(2)(b)’s waist, which he believed to be the handle of a firearm. He described that § 87(2)(b) had his left hand on the handle of the bicycle and his right hand on his waist in the same area he observed the bulge. PO Mussaw did not recall the size of the bulge, but stated that it was big enough to appear to be the handle of a firearm.

Similarly, PO Figueiredo testified that at the time they approached § 87(2)(b) he continuously placed his hand back and forth from the handle of the bicycle to his waistband. PO Mussaw looked towards § 87(2)(b)’s waist to observe what he was grabbing and observed a bulge from under § 87(2)(b)’s shirt. PO Figueiredo described that the bulge appeared to be something either black or brown sticking out from under § 87(2)(b)’s shirt. He further described that the object sticking out from under § 87(2)(b)’s shirt was also bulging forward as it was not flush with

§ 87(2)(b)'s body. Immediately after making this observation, PO Figueiredo told his partners, "I think he's got a gun." All officers stated that upon making the above observations, PO Mussaw directed § 87(2)(b) to stop several times, but he did not comply. By all of the officers' accounts, § 87(2)(b) was initially approached near Beach 54th Street and he continued to ignore PO Mussaw's request to stop until approximately Beach 48th Street. In PO Mussaw's attempt to stop § 87(2)(b) he cut § 87(2)(b) off by pulling the police vehicle up in front of § 87(2)(b)'s bicycle. At that time, § 87(2)(b) got off of his bicycle and fled on foot and PO Figueiredo and PO Lewis pursued him on foot and were able to catch up to him and handcuff him. All of the officers testified that they identified themselves as police officers at the time PO Mussaw initiated the stop. According to PO Mussaw, he asked § 87(2)(b) to stop in order to determine if he had a firearm on his person based on his observation. He stated that he wanted to conduct an investigation and also noted that § 87(2)(b) could have been issued a summons for riding in the middle of the lane. Similarly, PO Figueiredo stated that based on his observation of § 87(2)(b) coupled with § 87(2)(b)'s refusal to stop raised his suspicion that § 87(2)(b) had a firearm. According to PO Lewis, the stop was conducted because he and his partners wanted to ask § 87(2)(b) why he was blocking traffic and why he was reaching toward his waistband.

According to NYS VTL §1234 (2015), "Upon all roadways, any bicycle or in-line skate shall be driven either on a usable bicycle or in-line skate lane or, if a usable bicycle or in-line skate lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic" (Board Review 06). Additionally, a defendant's flight, coupled with circumstances providing a founded suspicion of criminality, warrant police pursuit. People v. Pitman, 2013 N.Y. App. Div. LEXIS 425 (2013) (Board Review 02).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D – Force: POolan Lewis used physical force against § 87(2)(b)

It is in dispute whether PO Lewis attempted to punch § 87(2)(b). According to § 87(2)(b) at the time PO Lewis closed in on § 87(2)(b) who was fleeing at the time, PO Lewis "threw a punch" at § 87(2)(b). However, § 87(2)(b) ducked down and he was not struck by PO Lewis.

During PO Lewis' CCRB statement, he stated that upon catching up with § 87(2)(b) he grabbed on to § 87(2)(b)'s hands to stop him and denied that he ever swung at or punched § 87(2)(b). He further denied that any of his partners did so either. According to PO Figueiredo, he directed PO Lewis to close in on and approach § 87(2)(b) while PO Figueiredo covered him with him gun drawn and pointed. PO Figueiredo observed that PO Lewis grabbed onto § 87(2)(b) at which time PO Figueiredo holstered his firearm and ran to assist PO Lewis. PO Figueiredo stated

that he did not see PO Lewis punch or strike § 87(2)(b). According to PO Mussaw, by the time he approached to assist his partners, § 87(2)(b) was on the ground.

§ 87(2)(b), § 87(2)(g)

Allegation E – Force: PO Andre Figueiredo pointed his gun at § 87(2)(b)

It is undisputed that PO Figueiredo pointed his gun at § 87(2)(b). § 87(2)(b) stated that, after PO Lewis attempted to punch him, PO Figueiredo pulled out his firearm, pointed it at him, and directed him to get down on the ground. § 87(2)(b) described that he was standing “no less than two feet away,” with the firearm pointed at § 87(2)(b)’s torso. § 87(2)(b) stated that prior to this, he had only been running away from the officers. During a follow up conversation with § 87(2)(b) he stated that he never reached for his waistband or pockets at any time.

During the testimonies of PO Mussaw, PO Figueiredo, and PO Lewis, they described that § 87(2)(b) was observed motioning towards his waistband as he was riding his bicycle. PO Lewis made no mention of a bulge. However, both PO Mussaw and PO Figueiredo, who were both seated in the front of the police vehicle upon approaching § 87(2)(b) on his bicycle, stated that they observed a bulge in § 87(2)(b)’s waistband, which they both believed appeared to be the handle of a firearm. While PO Mussaw was unable to describe the bulge in detail, he stated that it was later determined that the bulge was actually § 87(2)(b)’s belt, which was “too big” on § 87(2)(b) and sticking out of § 87(2)(b)’s pants loop. PO Figueiredo described that he saw something either black or brown sticking out from under § 87(2)(b)’s shirt, which he believed to be the handle of a firearm. He further explained that the object was sticking out slightly from under § 87(2)(b)’s shirt and was also protruding forward creating the bulge under § 87(2)(b)’s shirt near his waistband.

Immediately after PO Figueiredo made this observation, he told his partners, “I think he’s got a gun.” Based on their observations, all of the officers believed § 87(2)(b) was in possession of a firearm in his waistband. Upon pursuing § 87(2)(b), PO Figueiredo and PO Lewis pursued § 87(2)(b) on foot. Both officers explained that § 87(2)(b) was running back and forth through traffic. While PO Lewis made no mention of § 87(2)(b) coming to a stop and reaching for his waistband, PO Figueiredo described that when § 87(2)(b) ran into the middle of eastbound traffic, he stopped, faced the officers, and reached for his waist. Because of this observation coupled with PO Figueiredo’s belief that § 87(2)(b) was carrying a firearm, PO Figueiredo drew and pointed his firearm at § 87(2)(b) and directed him to keep his hands out and not reach for his waist. PO Figueiredo remained with his firearm pointed until PO Lewis approached § 87(2)(b) at which time PO Figueiredo holstered his firearm and ran towards § 87(2)(b) to assist PO Lewis.

The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety. While the standard is ultimately an objective one – what a reasonably prudent police officer in the same circumstances would have done – due deference should be given to the judgment of the officer at the time and scene of the incident. Police Department vs. Gliner OATH index No. 955/400 (2000) (Board Review 03).

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: PO Jolan Lewis searched § 87(2)(b)

Allegation G: Abuse of Authority: PO Jolan Lewis frisked § 87(2)(b)

It is undisputed that PO Lewis searched and frisked § 87(2)(b). According to § 87(2)(b) once he was face down on the ground, he felt PO Lewis and PO Figueiredo search him. § 87(2)(b) alleged that the officers searched his shirt, went into his pants pockets, removed and searched through his wallet, and removed a necklace with a set of keys from around his neck.

Although PO Lewis denied going into § 87(2)(b) pants pockets, he acknowledged that he felt the outsides of § 87(2)(b) s pockets. According to PO Lewis, after § 87(2)(b) stood up from the ground, he frisked and searched him to make sure that he was not carrying a weapon. PO Lewis described that he patted § 87(2)(b) down over his clothing from his waistband to his ankles and lifted § 87(2)(b) s shirt, exposing his waistband, so that he could visually inspect § 87(2)(b) s waistband. The frisk and search of § 87(2)(b) revealed that the source of the bulge was § 87(2)(b) s belt. PO Lewis stated that he was the only officer who searched § 87(2)(b) and that this was the only time § 87(2)(b) was searched during the incident. According to PO Figueiredo, he did not see any officer search or frisk § 87(2)(b) but stated that § 87(2)(b) would have been searched incident to a lawful arrest because § 87(2)(b) was being issued a criminal summons, which is in lieu of arrest. During PO Mussaw’s CCRB interview, he also stated that § 87(2)(b) would have been searched during the incident, but he did not recall who conducted the search of § 87(2)(b). PO Mussaw specified that § 87(2)(b) would have been searched because “when someone is placed in handcuffs, they are searched to make sure they do not have anything on their person.”

In *People v DeBour*, 40 N.Y.2d 210 (1976), the courts held that an officer must have reasonable suspicion that a suspect is armed to conduct a frisk (Board Review 01). Further, in *People v Stevenson*, 709 N.Y.S.2d 753 (2000), the court ruled that the frisk must be limited to where the weapon is reasonably suspected to be located (Board Review 04). In *People v Mills*, 208 A.D.2d 1089 (2014), the court held that a search cannot be conducted once the officer squeezes the bulge and determines it is not a weapon (Board Review 05). Therefore, it would have been reasonable for PO Lewis to frisk § 87(2)(b) s waistband where a bulge believed to be the handle of a firearm was observed. However, after feeling § 87(2)(b) s waistband and determining there was no weapon, PO Lewis had no reason to lift § 87(2)(b) s shirt to expose his waistband or to frisk his legs.

§ 87(2)(b), § 87(2)(g)

Allegation H- Abuse of Authority: PO Andre Figueiredo frisked § 87(2)(b)

It is undisputed that PO Figueiredo frisked § 87(2)(b). Although § 87(2)(b) made no mention of PO Figueiredo or any officer frisking his waistband, during PO Figueiredo’s CCRB interview he acknowledged that he did as such.

According to all officer testimony, § 87(2)(b) was observed continuously making contact with his waistband. Further, both PO Mussaw and PO Figueiredo observed a bulge of what they believed was the handle of a firearm in § 87(2)(b) s waistband. By § 87(2)(b) s own admission, he did not immediately stop when prompted by the officers to do so and then also fled on foot away from the officers, thus heightening the officers’ suspicions that he was carrying a firearm. PO Figueiredo explained that as soon as § 87(2)(b) was stopped and on the ground, he “right away”

frisked § 87(2)(b)'s waistband because he believed § 87(2)(b) was concealing a firearm in his waistband.

In People v Stevenson, 709 N.Y.S.2d 753 (2000), the court ruled that in such cases, a “frisk must be based upon reasonable suspicion that the officers are in physical danger and that the defendant poses a threat to their safety.” The rule further states that the frisk must be limited to where the weapon is reasonably suspected to be located (Board Review 04).

§ 87(2)(b), § 87(2)(g)

Allegation I: Abuse of Authority: PO Andre Figueiredo searched § 87(2)(b)

It is in dispute whether PO Figueiredo searched § 87(2)(b). According to § 87(2)(b) after he was down on the ground, he was handcuffed and then searched by PO Figueiredo and PO Lewis. § 87(2)(b) described that he was face down on the ground as both officers removed belongings from his pants pockets, which included his wallet, searched through his wallet, and also removed a chain from around his neck.

During PO Figueiredo's CCRB interview, he acknowledged that he conducted a frisk of § 87(2)(b) on his waistband area; however, he did not recall if he frisked any other area of § 87(2)(b)'s body or if he went into any of § 87(2)(b)'s pockets. PO Figueiredo further stated that while he did not see any other officer frisk § 87(2)(b) or see any officer search § 87(2)(b) he believed § 87(2)(b) would have been searched because he was placed in handcuffs and it would have been a search incident to a lawful arrest since § 87(2)(b) was issued a criminal summons, which is in lieu of an arrest. During PO Lewis' CCRB interview he stated that he conducted a search of § 87(2)(b) and that he was the only officer who searched § 87(2)(b). During PO Mussaw's CCRB interview, he stated that § 87(2)(b) would have been searched during the incident, but he did not know who conducted the search. Further, PO Mussaw elaborated that when someone is placed in handcuffs, they are searched to make sure they do not have anything on their person.

§ 87(2)(b), § 87(2)(g)

Allegation J: Abuse of Authority: An officer searched § 87(2)(b)

During § 87(2)(b)'s CCRB interview, he stated that an additional unit arrived on the scene. He stated that the officer arrived in a marked vehicle and was dressed in uniform. Only the driver of the police vehicle exited the vehicle. He described this officer as a uniformed Hispanic male in his 20s with curly hair. He could not further describe him and could not describe the other officer, who remained in the police vehicle. § 87(2)(b) stated that after the additional officer arrived, he was searched again more thoroughly as his shoes and socks were searched. § 87(2)(b) then stated that these officers only drove on the scene and then left without exiting their vehicle. During a follow-up conversation with § 87(2)(b) he stated that the driver of the marked patrol car

approached him, asked him where he was going, and then felt around the inside of his shoes and socks.

During the interviews of PO Mussaw, PO Figueiredo, and PO Lewis, they denied that § 87(2)(b)'s shoes or socks were removed or searched. Further they indicated that the officers who arrived on the scene happened to drive by, asked what was occurring and then left without exiting the vehicle, and they did not know their identities. Further, the investigator requested an event summary and it did not yield an event report for this incident (Board Review 16) § 87(2)(g)

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date